Comment Summary and Responses
Ballona Creek Estuary Toxic Pollutants TMDL
March 28, 2005 Draft

1. Kenneth C. Farfsing, City of Signal Hill
2. Desi Alvarez, Executive Advisory Committee (EAC)
3. Timothy Piasky, Construction Industry Coalition on Water Quality (CICWQ)
4. Rita L. Robinson, City of Los Angeles, Bureau of Sanitation
5. Edward H.J. Wilson, City of Signal Hill
6. Clifford H. Moriyama, California Coalition for Clean Water (CCCW)
7. Mike Wang, Western States Petroleum Association (WSPA)
8. Karen Ashby, California Stormwater Quality Association (CASQA)
9. Mitzy Taggart, Mark Gold, and Tracy Egoscue, Heal the Bay (HTB) and Santa Monica Baykeeper (Baykeeper)
10. John J. Harris, Richards|Watson|Gershon, representing the City of Beverly Hills
11. David W. Burhenn, Burhenn and Gest, representing the County of Los Angeles Department of Public Works
12. Valerie Nera and Michael Rogge, Workable Approach to Environmental Regulation (WATER)
13. Victoria O. Conway, County Sanitation Districts of Los Angeles County (CSDLAC)
14. Hank Giclas, Western Growers
Submitted After Deadline
15. Robert Kanter, The Port of Long Beach
16. Michael Flake, California Department of Transportation
17. Melanie Winter, The River Project

No.	Author	Date	Comment	Response
1.1	Signal Hill	5/9/05	Requests an extension of the comment period for the Ballona Creek Estuary Toxic Pollutants TMDL and continuing the hearing date.	Although the public comment period has not been extended, the hearing date has been continued to July 7, 2005.
2.1	EAC	5/10/05	The EAC requests an extension of the comment period for the metals and toxicity TMDLs from May 12, 2005 to May 24, 2005.	See response to comment number 1.1.
3.1	CICWQ	5/11/05	The development of a WLA for construction based upon total acreage is highly suspect because it uses one snapshot in time in order to establish WLA's for construction. The method for calculating the total acreage in this snapshot using the State Board enrollment database is not clear. It is highly likely that this "snapshot" in time would be substantially different depending on when the "snapshot" was taken.	Staff assumed a relatively constant turnover of construction projects in the urbanized portion of the Ballona Creek watershed to obtain an approximate estimate of their acreage. This was only done for the purpose of allocating the total storm water load among the storm water permittees. In addition, each individual storm water permittee is assigned an allocation based on the size of the construction site. The TMDL was calculated multiplying the average annual fine sediment deposition by the concentration-based numeric target.
3.2	CICWQ	5/11/05	The dry weather waste load allocation of zero for construction is unjustified.	There is no dry-weather waste load allocation of zero in the Ballona Creek Estuary Toxic Pollutants TMDL. Allocations are assigned on an annual basis.
3.3	CICWQ	5/11/05	To the extent the Waste Load Allocations reflect a regulatory disregard for naturally occurring pollution and/or for pollution more properly attributable to other unregulated public activities unrelated to construction activities, undue burdens foisted on construction activities could rise to the level of a "regulatory taking," or a violation of substantive due process. Under the United States Supreme Court's "rough proportionality" and "rational basis" standards.	The WLAs are established to implement existing water quality standards. To the extent a construction site is mobilizing pollutants and discharging storm water containing those mobilized pollutants, the operator is discharging pollutants within the legal ambit of the Clean Water Act. It is the

No.	Author	Date	Comment	Response
				discharger's action that is therefore contributing to a violation of water quality standards. No U.S. Supreme Court precedent supports a conclusion that the Regional Board's establishment of WLAs would rise to a constitutional taking in violation of the Fifth Amendment.
3.4	CICWQ	5/11/05	The Proposed Amendment continues the Regional Board's longstanding failure to properly account for economic considerations – as required to comply with California Water Code sections 13241 and 13263. Under section 13263, the Regional Board is required to consider factors outlined in section 13241 when prescribing 'requirements as to the nature of any proposed discharge" of storm water.	The proposed TMDL does not establish or alter water quality objectives. Therefore, the analysis set forth in §13241 is not required here, since section 13241 applies when "*establishing* a water quality objective." Because the TMDL is required under federal law, and is necessary to achieve water quality standards, there can be no serious argument that the TMDL establishes an objective. Furthermore, the Regional Board cannot prescribe the method of achieving compliance with the TMDL and is unable to describe the nature of all potential actions to achieve compliance. However, the staff report takes into account a reasonable range of economic factors in estimating potential costs associated with TMDL compliance. Despite its position that Water Code section 13241 does not apply, the Regional Board has developed information relevant to the

No.	Author	Date	Comment	Response
				section 13241 factors and considered them where appropriate. For example, the regional board has no discretion not to establish the TMDL at a level that will achieve water quality standards. Consideration of economics in establishing the TMDL could not result in a different total maximum daily load; however, the economics are considered in establishing a lengthy and flexible implementation schedule. This is particularly true of storm water dischargers, where the TMDL implementation anticipates the use of BMPs. (See also the economic discussions set out in Devinny, Kamieniecki, and Stenstrom "Alternative Approaches to Storm Water Quality Control" (2004), included as App. H to Currier et al. "NPDES Stormwater Cost Survey" (2005). Similarly, the past, present, and probable future beneficial uses have been considered extensively in the staff document. Again, the TMDL must implement the existing federal toxics policy and protect beneficial uses. The environmental characteristics of the Ballona Creek Estuary are carefully considered through the TMDL staff document to support the various implementation strategies. It is reasonable to implement federal policy on toxic water pollutants.

No.	Author	Date	Comment	Response
				With respect to housing, the region draining to the Ballona Creek Estuary is already substantially built out, but new housing developments are able to incorporate new structural BMPs that would facilitate compliance with the TMDL. The record in the municipal storm water case demonstrates that SUSMP-type measures can be effective and do not preclude the developing housing. Finally, the TMDL may encourage the development and use of recycled water, as the TMDL creates incentives to beneficially reuse water.
3.5	CICWQ	5/11/05	On-site measurements will be required of storm water runoff for comparison to a "concentration-based" waste load allocation. These are therefore effluent limitations expected to be met at the edge of the construction site. The TMDL lacks any indication of how much toxics would actually be expected from construction sites, how much of the toxics from construction sites actually makes its way to the receiving water, when it might arrive and how much of the toxics yield that does make it to the receiving water actually contributes to the violation of the water quality standard. There is no reason to believe that implementation of the current requirements of the State General Construction Permit and MS4 Permits would result in non-compliance with the WLAs. A *combined* storm water allocation should be adopted by using a regional approach. It may be assumed that virtually all of the construction projects discharge to the	The implementation language in the BPA and staff report have been revised to allow industry-wide BMP effectiveness studies to be submitted to the Board for their consideration. Individual construction permittees would be deemed in compliance if they implemented Regional Board approved BMPs. The source assessment section of the staff report supports the development of WLAs for construction permits. Construction sites are a potential source of sediment loading and toxic pollutants loading where pollutants exist in the soil or are washed off construction equipment.

No.	Author	Date	Comment	Response
			MS4 and that the MS4 has a requirement to meet the WLA prior to discharging to the receiving water. Therefore, construction projects should only need to implement additional BMPs (above and beyond those already required) if it is found that; 1) existing requirements are not sufficient to keep MS4 dischargers from being able to comply with their WLA downstream; and 2) truly representative sampling indicates that construction activities contribute substantially to the exceedances.	The BMP effectiveness studies conducted by the construction industry will demonstrate whether or not the current requirements of the state general construction storm water permit will result in attainment of waste load allocations. If no effectiveness studies are conducted and no BMPs are approved by the Regional Board within eight years of the effective date of the TMDL, each general construction storm water permit holder will be subject to site-specific BMPs and monitoring requirements to demonstrate compliance with waste load allocations.
3.6	CICWQ	5/11/05	On-site monitoring of all construction sites is infeasible because of the large sample sizes that must be collected to capture the variability of storm water. On-site monitoring is unwarranted because construction projects are already heavily regulated through the State General Construction Permit and the ordinances of MS4 operators. Unless and until there is substantial reason to believe that construction is a major contributor to a water quality standard violation notwithstanding the implementation of BMPs as already required by current regulations, it is unwarranted to require numeric effluent limits and compliance monitoring for construction sites.	See response to Comment No. 3.5.
4.1	City of LA	5/12/05	The RWQCB should provide a minimum period of 18 years for full implementation attainment instead of 15 years, and reevaluate the schedule at the TMDL 6-year re-opener, and expressly incorporate recognition of the ability to grant an extension to the schedule if needed for the City to fully comply with TMDL waste load allocations.	Regional Board staff believes that the 15-year implementation period is a sufficient amount of time to comply with the TMDLs. The implementation schedule shall be reconsidered at year six.

No.	Author	Date	Comment	Response
4.2	City of LA	5/12/05	The use of the effects range low (ERL) numeric targets for individual pollutants as a measure of toxicity in sediment is unreliable, as indicated very recently by numerous scientists. The characterization of sediment toxicity is more complex than a single numeric target for an individual toxic pollutant. Complex pathways of bioaccumulation involving physical, chemical, and biological interactions between different matrices and marine species are involved, each of which require rigorous multi-discipline scientific assessment. The RWQCB should use interim mean effects range median (ERMq) values as numeric goals or targets of sediment toxicity as suggested by SCCWRP and to incorporate as soon as adopted, the scientifically developed, multi-discipline State Sediment Quality Objectives (SQOs), which require multiple lines of evidence to examine sediment toxicity.	The selection of the ERL values as the numeric targets is consistent with the goals of the TMDL, which are to restore beneficial uses. In order to restore beneficial uses, the numeric targets need to limit adverse effects to aquatic life. The ERLs are presumed to be non-toxic levels and pose with a high degree of confidence of no potential threat. The ERL values are lower than the ERM values, and therefore incorporate an implicit margin of safety. The ERLs provide a readily measurable numeric target which can be used to calculate the TMDL. While multiple lines of evidence will prove useful for assessing sediment toxicity, such an approach may not be applicable to the establishment of numeric targets. There is a provision in the TMDL to re-assess the numeric targets and waste load allocations within six months of the State Board adopted sediment quality objectives. In addition, the TMDL has been revised to add a special study to collect data necessary for a applying a multiple lines of evidence approach.
4.3	City of LA	5/12/05	The RWQCB should extend the coordinated monitoring plan development period from 9 months to 12 months after the effective date	The proposed BPA and staff report have been revised to make this change.

No.	Author	Date	Comment	Response
			of the TMDL to allow for inter-agency coordination and to identify and address new challenges associated with sediment-focused monitoring.	
4.4	City of LA	5/12/05	The RWQCB should allow a minimum of 24 months for the Draft Implementation Plan and 30 months for the Final Implementation Plan. During this time, the stakeholders will have had significant opportunities to obtain and review data from special studies and identify potential activities and projects and make sensible judgments as to the scope of future implementation activities.	The deadline for submittal of the draft implementation plan has been extended to 5 years and the deadline for submittal of the final implementation plan has been extended to 5 ½ years. However, cities should move forward with implementation as soon as possible based on the information provided in the TMDL. Cities can revise implementation plans when new information becomes available.
4.5	City of LA	5/12/05	The City urges the Regional Board to: 1) identify alternative and less expensive implementation technologies which are equally or more effective and allow the City sufficient time to scope and examine such possible technologies, such as constructed wetlands and selective adsorption/absorption; 2) to work with the City in developing less costly implementation plans; and, 3) to acknowledge additional costs to those cited in the draft document to account for infrastructure costs for alternative fuel street sweepers, replacement and disposal of sand filter media, and higher O&M for sweepers and sand filters.	The Regional Board cannot prescribe the method of achieving compliance with the TMDL because of the restrictions in Water Code section 13360, and is unable to describe the nature of all potential actions to achieve compliance. However, the staff report takes into account a reasonably foreseeable means of compliance and the costs associated with compliance. Nothing in the TMDL restricts or limits the City's ability to identify and implement other less costly BMPs, provided they meet the resultant MS4 permit conditions.
4.6	City of LA	5/12/05	If ERLs are used as numeric targets, they should be applied to the entire watershed sediment load, not just the fine sediment load. The ERLs were derived from toxicity tests on bulk sediments; therefore, the	The TMDL will be considered after the special studies are completed and after the State Board adopts sediment quality

No.	Author	Date	Comment	Response
			TMDL calculations should be based on total sediment shoaling. At a minimum, the City requests that the Regional Board commit to recalculating the TMDL when new information is developed about grain size distributions, sediment quality objectives, and sediment transport dynamic in Ballona Creek and Estuary.	objectives
4.7	City of LA	5/12/05	The TMDL program applies only to water quality impairments (see 33 U.S.C. §1313(d)(1)(C) (requiring TMDLs to implement the applicable water quality standard)), not sediment quality except where sediment can be proven to be a contributor to impairment in the water column and is provided a load allocation or an allocation for background. Currently, there are no adopted sediment quality objectives against which to compare the sediment in the estuary to properly determine the existence of an impairment. It is assumed that the Regional Board is relying upon the Basin Plan's narrative Toxicity objective; however, numeric standards or a valid translation mechanism must be adopted first, as required by federal law 33 U.S.C. §1313(c)(2)(B) (requiring standards for toxics be numeric); 40 C.F.R. §131.11(a)(2) (requiring States to identify the method by which the State intends to regulate point source discharges of toxic pollutants on water quality limited segments based on such narrative criteria). Regional Board needs to review their approach to determine whether it can be used to determine impairments or as the basis of a TMDL.	TMDLs are required for 303(d) listed impaired water bodies. The development of TMDLs for impaired water bodies remains a legal obligation of the Regional Board. Data are currently under review for the 2004-2006 303(d) listing process. In the event that pollutants addressed in this TMDL are de-listed in the future, the TMDL will be revised accordingly.
4.8	City of LA	5/12/05	A clear correlation exists and studies have shown that large open spaces contribute to sediment loading. The City requests that open space areas be included as part of the watershed, since open space areas contributes large amounts of sediment.	Open space areas outside of the Ballona Wetlands are not assigned allocations because runoff from these areas drains to the storm drain system before reaching Ballona Creek or its tributaries. Once drainage from open space is collected by the storm drain

No.	Author	Date	Comment	Response
				system, it becomes a point source and is included with the storm water allocation.
4.9	City of LA	5/12/05	"Each municipality and permittee will be required to meet the WLAs at the designated assessment locations as defined in the TMDL effectiveness monitoring plan." Where are these designated assessment locations? No locations were identified in the referenced "effectiveness monitoring plan" as discussed on page 53. The only reference discusses annual sampling at random locations; is this what the RWQCB is referring to as "designated assessment locations?"	The TMDL effectiveness monitoring plan will be proposed by the MS4 and Caltrans permittees as part of their coordinated monitoring program and is subject to approval by the Executive Officer. The random sediment sampling locations to which the commentor is referring are part of the ambient monitoring program, which will also be proposed by the MS4 and Caltrans permittees as part of their coordinated monitoring program.
4.10	City of LA	5/12/05	The MS4s should not be held responsible for cleaning up and removing historic and legacy pollutants.	To the extent that the MS4 storm drain system mobilizes historic and legacy pollutants within the watershed and discharges storm water containing those mobilized pollutants, the MS4 system is contributing to a violation of water quality standards.
4.11	City of LA	5/12/05	The figures presented do not consider the infrastructure costs to be incurred by the City to abide with AQMD air standards. Similar to the City's refuse collection trucks, street sweepers will need to be considered to include alternative fuel street sweepers. Street sweepers will have to be retrofitted to Liquid Nitrogen Gas or some other clean fuel option in order to comply with AQMD mandates. It is anticipated that other municipalities will be impacted by this requirement as well. The figures presented in regard to operation and maintenance ("O&M")	The cost analysis is based on reasonably foreseeable compliance methods. O&M costs are provided in the staff report and are discussed further in the references for the cost assessment section. Costs for new street sweepers complying with AQMD regulations would be incurred regardless of whether or not the TMDL is adopted.

No.	Author	Date	Comment	Response
			cost per mile for vacuum-assisted sweepers failed to consider that these types of sweepers must travel at lower speeds. Thus, the use of these sweepers will incur a higher O&M cost per mile compared to current sweepers.	
4.12	City of LA	5/12/05	The Regional Board should recognize and address the fact that the structural BMPs cited are limited due to land requirements and may not be applicable throughout the entire watershed. These BMPs may not reduce other pollutants of concern as efficiently due to different requirements pollutant removal. The Regional Board must consider land acquisition costs and O&M costs.	The proposed implementation strategies are proposed as a potential means of compliance only and are discussed at length in the staff report. Removal efficiencies, siting, and sizing constraints are considered as part of the compliance strategy discussed in the cost assessment section. An estimate of land acquisition cost would be speculative. Furthermore, staff evaluated structural BMPs that were suitable for an urban setting. For example, Delaware sand filters are subsurface BMPs that are designed to accommodate limited land area. O&M costs are provided in the staff report and are discussed further in the references for the cost assessment section. The EPA-estimated infiltration O&M costs include inspections, sediment removal, and total rehabilitation upon failure. The EPA-estimated sand filter O&M costs include media replacement and disposal, removal of debris and vegetative growth.
4.13	City of LA	5/12/05	The City's Trash TMDL implementation strategy targets trash and other non-sewage floatables. Although some of the BMPs will reduce the amount of sediment in the runoff as a by-product to removing trash, the BMPs used to meet Trash TMDL requirements will likely not reduce a	Some sediment and associated pollutant removal has been reported in vortex separation BMPs and other full-capture devices. The staff report merely states that it

No.	Author	Date	Comment	Response
			significant amount of sediment/toxic pollutants. The RWQCB should change the language in the staff report to read, "*It will also be important to document* ANY POSSIBLE *reductions in sediment loading* THAT MAY BE INCIDENTALLY *already being achieved via BMPs currently employed under the trash TMDL.*"	is important to document reductions in metals loading already being achieved via BMPs currently employed under the Trash TMDL. The proposed revision is not necessary and would not affect the substantive portions of the TMDL.
4.14	City of LA	5/12/05	The cost associated with implementing a project should include the cost to retrofit existing infrastructure, rather than installation in new undeveloped areas. This watershed is, for the most part, highly urbanized with existing infrastructure already in place.	The BMPs discussed in the staff report could be applied to retrofitting existing structures and urbanized areas. The EPA and FHWA costs did not differentiate between new construction and retrofitting. However, costs of retrofitting were specifically considered in the staff report. The costs reported by the Caltrans BMP retrofit pilot program are discussed in the cost assessment section of the staff report. The third party review of the report attributed the higher Caltrans costs to the small scale and accelerated nature of the pilot program. Based on this review, it is not clear that retrofit costs would necessarily be any higher.
4.15	City of LA	5/12/05	The City believes the TMDL should recommend a methodology for this toxicity testing. Additionally, it should be STRESSED that monitoring labs need the option and flexibility to replace current methodology with new and improved methods as they are developed. The City suggests the following language: "Amphipod bioassays should be conducted following methodology in EPA. 1994. Methods for assessing the toxicity of sediment-associated contaminants with estuarine and marine amphipods. United States Environmental Protection Organization, Office of Research and Development, EPA/600/R-94/025, or by any	The Executive Officer will consider new and improved methodologies before approving the ambient and TMDL effectiveness monitoring plans. Specifying methodologies within the TMDL would restrict flexibility in implementation.

No.	Author	Date	Comment	Response
			improved method requested by the monitoring laboratory and determined by the Executive Officer and/or USEPA to be appropriate."	
4.16	City of LA	5/12/05	Toxicity should be expressed relative to a control group not a single test. Therefore, a better definition would be to state that 'Toxicity shall be indicated by two criteria being met concurrently: 1) a statistically significant decrease in survival relative to control organisms (significance determined by T-test, á = 0.05); and 2) the mean survival in the sample is less than 70% of the mean control survival. The problem is that test sediment survival below 70% may not be statistically different from the control survival, if the control is also low. This situation would not be indicative of toxicity, but instead may indicate unhealthy test animals or poor lab technique. This is why both criteria should be met. This result should trigger repeat testing rather than being considered an immediate indication of toxicity.	The City may present this approach in the draft monitoring plan. The Executive Officer will consider alternative approaches as presented in the plan during review and approval of the final plan.
4.17	City of LA	5/12/05	Monitoring labs should have the option to confirm toxicity by repeating a bioassay before proceeding to a TIE, so that unnecessary work due to false positive test results can be avoided. This would be especially important for samples that are near the threshold for toxicity. "Accelerated monitoring" is an approach that is often used as a preliminary step prior to initiating a TIE (refer to the recently adopted Hyperion and Terminal Island NPDES permits).	The monitoring plan has been revised to provide for accelerated monitoring before proceeding to a TIE.
4.18	City of LA	5/12/05	The TMDL document mentions a significant deficiency, that there is an absence in fish tissue contaminant burden data. It also mentions that more data are needed and identifies that this data can be gathered as part of ambient monitoring, but does not specify a program. A program needs to be developed to collect fish tissue contaminant burden data and specified as part of the TMDL.	The ambient monitoring program will be submitted by the permittees for approval by the Executive Officer as part of the coordinated monitoring program. Staff agrees that this program should include fish tissue contaminant burden data.
4.19	City of LA	5/12/05	For Phase I TIE testing, C18 is specified as the media for solid phase extraction. Monitoring labs should be given the choice of using C18 or	The monitoring plan has been revised to allow for a choice of either C8 or C18

No.	Author	Date	Comment	Response
			C8 media for solid phase extractions. Both C18 and C8 are commonly used in TIE testing. C8 is often more desirable because it has a higher elution rate than C18 (i.e., it is easier to elute bound toxicants from the media, so that they can be further isolated and analyzed.)	media.
4.20	City of LA	5/12/05	Unlike typical TMDLs, the WLAs refer to the amount of pollutant deposited in Areas A and B rather than the amount discharged from the MS4 system. A translation will be necessary if one wants to convert "deposition WLAs" into "discharge WLAs" if that information is needed during the compliance or implementation process. This is because only a portion of metals discharged will settle in the estuary and affect its beneficial uses. In the staff report and Basin Plan Amendment, clarify that the tables with loading capacity and WLAs are expressed as limitations on the amount of pollutant deposition, not amount discharged, so it will be clear that a conversion may be necessary for clarity in reporting or design of BMPs.	The loading capacity and waste load allocations specify the amount of pollutants in the sediment that can be discharged to Ballona Creek under the proposed Basin Plan Amendment.
5.1	Signal Hill	5/11/05	The Regional Board has failed to establish that an impairment in the sediments of Ballona Creek Estuary exists, therefore, the development of a TMDL is inappropriate. The TMDL presents no evidence of toxicity in the sediments and the use of the sediment quality guidelines alone based on a "single line of evidence" is inadequate to justify a listing. The Scientific Steering Committee recommends that multiple lines of evidence be evaluated before determining that the sediment is impaired. In addition, the sediment chemistry data is more than five years old and the estuary sediments are dredged about every two years.	Data are currently under review for the 2004-2006 303(d) listing process. In the event that pollutants addressed in this TMDL are de-listed in the future, the TMDL will be revised accordingly.
5.2	Signal Hill	5/11/05	The use of ERL values as numeric targets for final sediment concentrations is wholly unsupported by scientific literature. Numerous studies have noted the lack of association between effect of impact in sediments and the comparison of sediment chemical concentrations with ERL and ERM values. Even if an impact, such as toxicity, is shown to	See response to comment No. 4.2.

No.	Author	Date	Comment	Response
			exist in Ballona Creek Estuary sediments, the Regional Board has provided no evidence to suggest that the constituents for which TMDLs are developed are responsible.	
5.3	Signal Hill	5/11/05	The TMDL staff report estimates that, on average, approximately 45,000 m^3/yr of sediment are transported by Ballona Creek annually. The staff report also finds that approximately 110,000 m^3/yr of sediment are deposited annually adjacent to the creek mouth. Clearly, there is another source of sediment to the creek mouth area (longshore transport) that is more significant than the sediments transported by Ballona Creek.	The sediment listings are for the Estuary, so the loading capacity is developed based on sediment yield from Ballona Creek. Sediment yield from Ballona Creek has been shown to be the main contributor to shoaling in Areas A and G, so the estimated net sedimentation rate for these areas was used. The staff report has been revised to state that the northerly longshore transport of sediment into the south entrance channel is negligible (USACE, 2003).
5.4	Signal Hill	5/11/05	The TMDLs are developed based on the assumption that all sediment-associated metals will deposit in a limited area at the Creek mouth, that no metals associated with creek-delivered sediment will travel beyond this limited area, and that no metals are transported into the area on sediments from other sources. These assumptions result in TMDL that are far lower than are appropriate. In addition, even if these low targets could be met for sediments transported by the creek there is no assurance that target concentrations would be met due to the significant contribution of sediments from longshore transport.	The TMDL is based on the annual average amount of fine sediment that deposits in the Estuary based on data from the Army Corps of Engineers. Also see response to comment No. 5.3.
5.5	Signal Hill	5/11/05	We encourage the Regional Board to delay adoption of the Ballona Creek Estuary Toxics TMDL. At a minimum, the implementation plan for the TMDL should be restricted to the collection of the data that would be required to establish that impairments exists and to establish the causative agents for that impairment.	Data are currently under review for the 2004-2006 303(d) listing process. In the event that pollutants addressed in this TMDL are de-listed in the future, the TMDL will be revised accordingly. Cities will

No.	Author	Date	Comment	Response
				submit a draft implementation plan for Executive Officer review with proposed implementation measures. Cities can revise the plan based upon new information when the TMDL is reconsidered in six years. Furthermore, there is a provision in the TMDL to re-assess the numeric targets and waste load allocations within six months of the State Board adopted sediment quality objectives.
6.1	CCCW	5/12/05	The lines of evidence do not support a TMDL for toxic pollutants in sediment for Ballona Creek Estuary. The development of this TMDL is based solely upon concentrations of pollutants in sediments that exceed a sediment quality guideline value (ERM). The State's recently adopted Impaired Waters Listing Policy recognizes that sediment quality guideline values frequently fail to predict impairment. In fact, the policy allows consideration of sediment quality guideline values in listing decisions only where there is a finding of sediment toxicity, and there is no evidence of sediment toxicity in Ballona Creek Estuary sediments. The insufficiency of a single line of evidence is further recognized in the State's development of Sediment Quality Objectives, which will require three lines of evidence (sediment chemistry, sediment toxicity, and benthic community condition) to assess whether or not a sediment is impaired. We note also that the source analysis and development of waste load and load allocations appear to be deficient, in that the TMDL fails to consider the largest source of sediment to the Ballona Creek estuary (longshore transport) and improperly allocates loads for a small area of estuary sediment to all particulate matter in the creek. Significantly,	See response to comment Nos. 5.1 (for establishment of impairment based on ERMs), 5.3 (regarding longshore transport) 4.2 (regarding use of ERLs as numeric targets)

No.	Author	Date	Comment	Response
			more work is needed to develop scientifically appropriate target sediment concentrations. Only then should waste load and load allocations and implementation programs be developed.	
6.2	CCCW	5/12/05	This comment is specific to the Los Angeles River and Ballona Creek Metals TMDLs.	N/A.
6.3	CCCW	5/12/05	This comment is specific to the Los Angeles River and Ballona Creek Metals TMDLs.	N/A.
6.4	CCCW	5/12/05	This comment is specific to the Los Angeles River and Ballona Creek Metals TMDLs.	N/A.
6.5	CCCW	5/12/05	The TMDLs make the cities responsible for metals pollution from sources out of their control such as vehicular related atmospheric deposition. The Regional and State water boards should work with EPA to address source control issues instead of forcing unnecessary capital improvement projects upon local governments and other permittees.	Permittees are responsible for storm water that they discharge to the river. For example, although permittees may have little control over sources of indirect air deposition of metals, once metals are deposited on land under the jurisdiction of a permittee, they are within a permittee's control and responsibility. In addition, the TMDL establishes WLAs for a variety of discharges and LAs for nonpoint sources that contribute metal loading. It is anticipated that these will reduce metal loading through the MS4. To the extent sources outside the legal authority of local municipalities are contributing metals loading, the regional board will work with the affected dischargers to develop an effective strategy to address the metals loading. If necessary, the Regional Board can and will take direct enforcement action against other sources.

No.	Author	Date	Comment	Response
				Staff has met with the South Coast Air Quality Management District, Southern California Coastal Water Research Project, Southern California association of Governments, and LA County Department of Public Works to discuss aerial deposition issues. Participants in the meeting agreed to meet quarterly to address these issues.
6.6	CCCW	5/12/05	The Board has failed to prepare a complete functionally equivalent document, which is not equivalent to an EIR.	The BPA, together with the staff report and backup materials, are a substitute document for an EIR or negative declaration and initial study. Included in these backup materials is the agenda item summary prepared prior to the Board's consideration of the proposed BPA. The item summary will discuss alternatives to the proposed action, including a "no action" alternative. It is important to recall that there is no discretion in establishing WLAs to meet water quality standards. The discretion, for which appropriate alternatives are considered, is contained within the program of implementation.
6.7	CCCW	5/12/05	The Regional Board has failed to conduct 13000 and 13241 reviews as required under the Porter-Cologne Act. These State code sections require the Board to review the effects of the TMDL on local economy, the production of housing and general societal impacts.	See response to comment No. 3.4.
7.1	WSPA	5/12/05	We believe that the Regional Board has not demonstrated that any impairments exists in the sediments of Ballona Creek Estuary and as	See response to comment No. 5.1.

No.	Author	Date	Comment	Response
			such a TMDL is not required. We urge that the next step be that the Board find "no evidence of impairment in Ballona Creek," and therefore conclude that "no TMDL is developed for toxic pollutants in the sediment for Ballona Creek Estuary."	
7.2	WSPA	5/12/05	The use of ERLs and ERMs for TMDL development is inappropriate. Since their development in 1995, numerous studies have demonstrated that the use of ERLs and ERMs as threshold values is inappropriate. The Board should incorporate the multiple line of evidence embodied in the State Boards approach for the State SQO guidance.	See response to comment No. 4.2.
7.3	WSPA	5/12/05	The TMDL is based on data that is old and not reflective of the current sediment situation in the Estuary, especially in light of dredging that occurs every two years. WSPA recommends that the Board collect and evaluate data that would be representative of the current condition of the sediments and that the TMDLs contain provisions for re-opening the TMDLs when better, more recent data has been collected and evaluated.	See response to comment No. 5.1.
7.4	WSPA	5/12/05	The TMSL makes the implicit assumptions that no metals are transported into the area on sediments from other sources when data in the staff report indicate sediment contributions from other sources. Therefore, we believe that the loading capacities reflected in the TMDL are incorrect and far too low. WSPA recommends that the TMDL loading capacity and allocations be amended to account for sediment from all sources.	See response to comment Nos. 5.3 and 5.4.
7.5	WSPA	5/12/05	We urge the implementation plan provide for an adequate schedule, for all dischargers, that is sufficiently long for the Board to conduct the monitoring and research needed. The 15-year implementation schedule for MS4 should apply to all dischargers. In addition, the plan should provide for a re-opener so that the TMDL can be properly developed when the appropriate data and research has been done. Until a properly developed TMDL is prepared, the interim implementation should be	Facilities subject to the industrial general permit are much smaller than the MS4 permittess, with more consistent sources and fewer responsible agencies to coordinate. Therefore, they do not need as long of an implementation schedule as do the MS4 permittees. There is a provision in the

No.	Author	Date	Comment	Response
			BMPs that target sediment reductions.	TMDL to re-assess the numeric targets and waste load allocations within six months of the State Board adopted sediment quality objectives. The TMDL will also be reconsidered 6 months after the effective data. It is expected that industrial storm water permittees will implement BMPs in order to meet waste load allocations. Permit writers must provide adequate justification and documentation to demonstrate that specified BMPs are expected to result in attainment of the numeric waste load allocations.
7.6	WSPA	5/12/05	BMPs must be designed to address a "design" storm. Storms larger than the design storm should not be included in the allocation.	Staff commits to addressing the issue of a maximum design storm for BMP compliance through the wet-weather task force. Based on the task force's recommendation, staff will bring the definition of a storm that will address multiple TMDLs to the Board for their consideration as a Basin Plan amendment.
7.7	WSPA	5/12/05	The implementation plan contemplates an iterative BMP approach to address target allocations. There are a number of practical criteria that need to be included in the implementation plan. For example, what are the monitoring/sampling protocols, how and what is used to trigger iterative BMP review, how and what needs to be measured to measure progress. WSPA recommends that the Regional Board conduct workshops and solicit stakeholder input on these criteria.	Comment noted. Monitoring and sampling protocols and BMP triggers will be discussed as part of the development of a watershed specific industrial storm water permit.

No.	Author	Date	Comment	Response
7.8	WSPA	5/12/05	Unless a permit holder is a de minimis discharger, all individual permit holders must be provided and allocation. Currently in the draft TMDL, individual permit holders for storm water discharges are not given an allocation.	Individual NPDES permit holders for minor NPDES permits and general non-storm water NPDES permits have a concentration-based waste load allocation equal to the numeric targets. Individual general storm water permittees are assigned a mass-based allocation based on the size of their facility.
7.9	WSPA	5/12/05	When detection levels are greater than the SQG, the TMDL used the detection level as "actual" concentrations for load development. The TMDL should clarify that dischargers are not subject to this same criterion. Dischargers should report non-detects as non-detects.	Dischargers shall sample using detection levels below the ERLs.
7.10	WSPA	5/12/05	The TMDL is based on ten-year average sediment loadings. The TMDL is essence acknowledges that some years will have more loading than other years. Yet, the allocations for storm water are based on yearly loading and evaluation of BMP effectiveness. The TMDL must clarify how the yearly BMP effectiveness is to be reconciled with a ten-year average.	The BPA states that permit writers must provide adequate justification and documentation to demonstrate that specified BMPs are expected to result in attainment of the waste load allocations. The sizing of BMPs will be addressed by the wet-weather task force, which will in effect set an upper boundary for allocations resulting from high volume storm events.
7.11	WSPA	5/12/05	We believe that a proper functional equivalent document for this TMDL must be more substantial than the checklist response provided by the Regional Board. We also believe that the Regional Board must consider the economic analysis requirements of Porter Cologne Sections 13241 and 13242.	See response to comment Nos. 6.6 (for discussion of FED) and 3.4 (regarding 13241). The proposed TMDL implements existing water quality objectives in conformance with section 13242. The TMDL contains a description of likely structural and nonstructural BMPs that would be used to

No.	Author	Date	Comment	Response
				comply with the existing water quality objectives. Section 13242 only requires a "description of the nature of actions," which is what the TMDL staff report describes. Furthermore, the Regional Board cannot prescribe the method of achieving compliance with the TMDL because of the restrictions in Water Code section 13360, and is unable to describe the nature of all potential actions to achieve compliance. However, the staff report takes into account a reasonably foreseeable means of compliance and the costs associated with compliance.
7.12	WSPA	5/12/05	It is our belief that Ballona Creek Estuary is not impaired and that it should be de-listed. If the Board proceeds to adopt a TMDL, we urge that at a minimum, further workshops be held and stakeholder input be solicited so that a more scientifically correct TMDL can be developed.	The Ballona Creek Estuary is listed on the 303(d) list and is subject to the consent decree schedule for TMDL development. The data analysis performed during TMDL development, as described in the staff report, confirmed the findings of impairment. The proposed TMDL has been developed with input from numerous stakeholders. The Board held a workshop at the April 7, 2004 regular Board meeting and staff held an additional workshop on April 12, 2004 to receive stakeholder comments.
7.13	WSPA	5/12/05	From the attached Flow Science report: The information and data presented in the TMDL staff report do not establish that any impairment exists in the sediments of Ballona Creek Estuary. Since their development in 1995, numerous studies have demonstrated that the use	See response to comment No. 5.1.

No.	Author	Date	Comment	Response
			of ERLs and ERMs as threshold values is inappropriate. The State's Listing Policy indicates that sediment quality guidelines should be used only to establish a link between observed sediment toxicity and a pollutant or pollutant(s). Because the TMDL presents no evidence of toxicity in the sediments, the use of sediment quality guidelines alone is inadequate to justify a listing in the first place. In addition, the use of sediment quality guidelines alone is use of a "single line of evidence," which is contrary to the approach proposed by State Board in the development of Sediment Quality Objectives. Finally, we note that the USACE dredges the entrance to the harbor every two years. Thus, the data supporting the development of the TMDL were collected prior to 2000, and dredging has occurred since then. Thus, it is unclear that the older sediments, which are no longer present, are representative of current sediment condition. The Regional Board has not collected or presented any data that would be representative of the current condition of the sediments.	
7.14	WSPA	5/12/05	From the attached Flow Science report: The use of "ERL" values as numeric targets for final sediment concentrations is inappropriate and unsupported by the scientific literature. Numerous studies, including studies performed by SCCWRP in southern California sediments, have noted the lack of association between effect of impact in sediments and the comparison of sediment chemical concentrations with ERM and ERL values.	See response to comment No. 4.2.
7.15	WSPA	5/12/05	From the attached Flow Science report: The quantity of fine material transported by Ballona Creek that does not deposit to areas A and G (approximately 3,918 m3/yr, calculated as the difference between the mean annual load of fines (8,923 m3/yr) and the amount deposited to areas A and G (5,005 m3/yr)) will certainly carry a metals load, as will the coarse sediment fraction. The TMDL must account for the metals associated with these loads. Thus, the loading capacities presented in	See response to comment Nos. 5.3 and 5.4. The calculation is based on conservative assumptions which provide an implicit margin of safety.

No.	Author	Date	Comment	Response
			Table 5-2 of the TMDL staff report are far too low.	
7.16	WSPA	5/12/05	From the attached Flow Science report: The TMDLs are developed based on the assumption that all sediment-associated metals will deposit in areas A and G and that no metals associated with creek-delivered sediments will travel beyond this limited area. Perhaps more importantly, the TMDL also makes the implicit assumption that no metals are transported into the area on sediments from other sources. As the numbers in the staff report demonstrate, the amount of sediment transported to the Marina Del Rey area from longshore transport (or other sources) is greater than the amount transported from Ballona Creek.	See response to comment Nos. 5.3 and 5.4.
7.17	WSPA	5/12/05	From the attached Flow Science report: The TMDL staff report provides no information on existing metals fluxes from general industrial or construction sites, or on how existing concentrations or mass loadings are divided among various sources. Allocations for discharges subject to the general industrial and general construction permits are further divided into per acre waste load allocations (e.g., copper is 3 g/yr/ac). These are very small numbers, and the TMDL similarly provides no detail as to how much reduction would be required in either existing loads or in the concentrations of metals or organic pollutants on sediments carried by storm flows.	The TMDL is not required to calculate the pollutant reduction required by dischargers to meet WLAs. Dischargers must meet their WLAs in order to achieve the numeric targets, which are set to protect the benefical uses of the Estuary, regardless of the dischargers' existing loadings.
7.18	WSPA	5/12/05	From the attached Flow Science report: Because of the uncertainty in the science underlying the TMDL, a uniform implementation schedule should be adopted for all dischargers, 15 years, as provided for Caltrans and the MS4 discharges. Since, the TMDL limits were developed from a 10-year average of data, TMDL progress should also be evaluated using a 10-year running average, therefore, implementation schedules shorter than 10 years will not provide a true evaluation of compliance. A longer implementation schedule will allow for the collection of	See response to comment No. 7.5.

No.	Author	Date	Comment	Response
			appropriate data, and would provide time for a re-opener before stringent control measures are required. In the interim, an iterative BMP approach could be implemented to reduce loads to the estuary sediments.	
7.19	WSPA	5/12/05	From the attached Flow Science report: A proper functional equivalent document for this TMDL must be more substantial than the checklist response provided by the Regional Board. Also the Regional Board must consider the requirements of Porter-Cologne Sections 13241 and 13242, especially as the TMDL appears to impose state requirements that are based upon sediment quality and thus are more stringent than the requirements of the Clean Water Act.	See response to comment No. 7.11.
8.1	CASQA	5/11/05	The development of a watershed specific general permit for industrial and construction storm water permittees would create confusion and inefficiency in relationship to the statewide general permits because for many dischargers, operations are conducted in more than one region. CASQA is concerned with the precedent set by the Los Angeles Regional Board that may encourage other regional boards to adopt watershed specific permits when TMDLs are involved. This fragmented approach will lead to contentious public hearings, lack of coordination between the State and regional boards, and lost opportunities for collaboration. Compliance with the statewide general permit does not preclude having additional watershed specific requirements. With regard to monitoring requirements, the storm water general permits already give the Regional Board authority to require additional monitoring.	The Regional Board will work closely with the State Board to ensure an orderly implementation of the TMDLs. Staff believes that general permits serve a valuable purpose for efficiency and consistency. However, federal and state law (including the existing permits) recognize that circumstances may require alternate general or individual permits, and general permits are only allowed to the extent they address similarly situated dischargers. When a discharger discharges to an impaired water body, it is in a different class than dischargers to unimpaired waters. As TMDLs are established, they are by necessity developed on a watershed basis. While staff believe a Regional Board-adopted general, watershed permit is the most efficient approach, the option to have

No.	Author	Date	Comment	Response
				the State Board incorporate watershed requirements into is general permit can be considered in the future.
8.2	CASQA	5/11/05	The Regional Board's attempt to pass along its responsibility to the MS4s for overseeing monitoring of industrial and construction dischargers further complicates the MS4's programs.	MS4 oversight of monitoring is only offered as a suggestion, but staff believes it would increase efficiency and encourage cooperation, and ultimately benefit the MS4 permittees.
8.3	CASQA	5/11/05	The Regional Board should wait until State Board completes its effort to develop sediment quality criteria. The use of ERLs for the numeric targets is inappropriate. The characterization of sediment toxicity is more complex than a single numeric target for an individual toxic pollutant. Therefore, a weight of evidence approach should be applied since it integrates multiple indicators and thereby increases confidence. Shot of waiting for the development of the State sediment quality criteria, the Regional Board should provide provisions to reopen the number target when the State criteria are established.	See response to comment No. 4.2.
9.1	HTB and Baykeeper	5/12/05	We strongly support the use of ERLs as the numeric targets for the within the Ballona Creek Estuary because we believe these numeric values are the best measurement tool currently available to assess progress toward restoring the sediments and related beneficial uses within the Ballona Creek Estuary.	Comment noted.
9.2	HTB and Baykeeper	5/12/05	Interim progress and final compliance assessment with this TMDL should include toxicity and bioaccumulation measurements. There is uncertainty associated with using the ERLs, this uncertainty can be partially mitigated by incorporating adequate toxicity and bioaccumulation monitoring into the TMDL. Incorporation of sediment triad study results into monitoring would provide valuable data to assess implementation strategies and ultimate compliance.	The BPA has been revised to include toxicity and bioaccumulation monitoring as part of effectiveness monitoring.

No.	Author	Date	Comment	Response
9.3	HTB and Baykeeper	5/12/05	The implementation schedule of 15-years for the MS4 and Caltrans storm water NPDES permittees is unreasonably long. Final compliance with the TMDL should be no longer than 10 years from the effective date of the TMDL.	The tentative resolution has been revised to direct staff to propose revisions to the implementation schedule dependent on the use of an integrated water resources approach. This change was made to be consistent with the Regional Board's direction on the LA River Metals TMDL during the June 2, 2005 regular Board meeting.
9.4	HTB and Baykeeper	5/12/05	Monitoring requirements in the TMDL for toxicity and bioaccumulation are grossly inadequate. At a minimum, toxicity testing must be completed using multiple species and sub-lethal endpoints. Specific bioaccumulation monitoring requirements must be added to the TMDL because the RWQCB is using this TMDL process to inappropriately delist the estuary for fish tissue impairment.	These requirements have been added to the proposed BPA and staff report.
9.5	HTB and Baykeeper	5/12/05	The TMDL currently requires testing of only one type of organism, amphipods, for the most extreme ecological outcome, mortality. It is scientifically preferred practice to conduct toxicity testing on multiple organisms to assess the effects of toxic pollutants. We recommend that monitoring requirements include a basic suite of toxicity testing that will ensure that more sensitive species are protected against ecologically-significant, non-lethal impacts from both metals and organics. Specifically, we propose that the TMDL monitoring requirements include testing of multiple species and non-lethal endpoints. This toxicity testing should be a requirement of the TMDL effectiveness monitoring, not just the ambient monitoring.	These requirements have been added to the proposed BPA and staff report.
9.6	HTB and Baykeeper	5/12/05	All of the toxic chemicals regulated by this TMDL have the potential to bioaccumulate in tissue. In particular, the organochlorine chemicals	These requirements will be added to the proposed BPA and staff report.

No.	Author	Date	Comment	Response
			(DDT, PCBs, chlordane, and dieldrin) are regarded as bioaccumulative chemicals because they so easily accumulate in tissue. We recommend that the TMDL Effectiveness Monitoring requirements be revised to include bioaccumulation monitoring that will be conducted throughout the life of the TMDL. This monitoring will provide a critical check that the ERLs are in fact, the appropriate numeric targets for this TMDL.	
9.7	HTB and Baykeeper	5/12/05	We disagree with the staff report's assertion that using the ERLs as numeric targets incorporates an implicit margin of safety. The Regional Board should include a 10% margin of safety, calculated by multiplying all the proposed numeric targets by 0.9 to obtain sufficiently protective final numeric targets.	The TMDL includes an implicit margin of safety by basing the numeric target on the lowest sediment quality guidelines and through the assumptions used in calculating the loading capacity.
9.8	HTB and Baykeeper	5/12/05	The interim implementation targets must be enforceable and should ensure steady progress to final numeric targets. How will the RWQCB determine that 25%, 50% and 75% of the total drainage areas of the MS4 and Caltrans permittees are effectively meeting the WLAs? Interim targets based on percent reduction of WLAs, is a more direct, enforceable and effective way to structure the TMDL. We urge the Regional Board to revise the current interim targets to WLA reductions not total drainage area.	While multiple alternatives for determining compliance may exist, staff proposes that a phased, area-based reduction is appropriate for the toxics TMDL. Staff anticipates that the MS4 and Caltrans permittees will focus BMP implementation efforts on specific drainage areas until all areas comply with the TMDL. The level of effort and cost necessary to accurately measure load reductions for the entire watershed would greatly exceed existing monitoring efforts and divert resources away from implementation.
9.9	HTB and Baykeeper	5/12/05	The TMDL requires implementation plan submittal by the MS4 permittees and Caltrans for approval by the Executive Officer. Given the disappointing quality of recent implementation plans developed for the bacteria TMDLs. We strongly believe public review and comment of the implementation plans for this TMDL is necessary to help the	Staff agrees to conduct workshops to allow for public review and comments on proposed implementation plans prior to Executive Officer approval.

No.	Author	Date	Comment	Response
			planning process.	
9.10	HTB and Baykeeper	5/12/05	The Regional Board should require that implementation include routine removal of sediment build-up within the storm drain system discharging into Ballona Creek and the Estuary. As demonstrated in sediment studies by the Army Corps. of Engineers, Ballona Creek sediments in the open channels throughout the watershed have been found to contain elevated levels of metals and organic pollutants. Removal should be mandatory before the beginning of the wet season.	It is not staff's intention to remove all sediments in Ballona Creek. Sediment release is important for beach replenishment and the wholesale removal of sediment is not required by the TMDL. Staff agrees that hot spots of polluted sediment should be identified and encourages the use of BMPs to remove sediments form these hot spots.
9.11	HTB and Baykeeper	5/12/05	We concur with the recommendation of the Contaminated Sediments Task Force, that the Regional Board link the sediment and water-based TMDLs so that water-based metals loadings are reduced sufficiently to improve sediment quality in the estuary. Based on our reading of the two TMDLs, it is unclear how the two TMDLs are related, and if their implementation schedules are consistent. The RWQCB should provide some insight into the relationship between the water column concentration limits and the mass loadings allowed in the sediment TMDL.	The Ballona Creek Metals TMDL will ensure attainment of the applicable water column objectives. Staff assumes that these levels will be sufficient to reduce the metals partitioning from water to sediments in Ballona Creek Estuary. Special studies are planned to verify this assumption.
9.12	HTB and Baykeeper	5/12/05	A definition of fines and sands must be included in the TMDL staff report.	A definition of fines and sands has been added to the staff report and BPA.
9.13	HTB and Baykeeper	5/12/05	The implementation section of the Staff Report does not discuss the Army Corps. of Engineers' role in this TMDL, even though they have jurisdictional control over portions of the drainage system, and are responsible for maintain navigation in and adjacent to the Estuary. How does the RWQCB anticipate soliciting their input in the implementation process?	The Regional Board can not dictate how compliance with the TMDL is implemented, therefore, it will be up to the responsible agencies to solicit the Army Corps. of Engineers input.
10.1	Beverly Hills	5/12/05	We incorporate by reference each of the comments submitted by the County and other MSR Permittee Cities, and, specifically, each of the	Comment noted. Individual comments on the Ballona Creek Estuary Toxic Pollutants

No.	Author	Date	Comment	Response
			objections to the TMDL set forth in those comments.	TMDL will be addressed specifically.
10.2	Beverly Hills	5/12/05	All TMDLs must be based on sound science and be established in accordance with State and Federal regulations. (40 CFR 130.2(i) and 40 CFR 130.7(c)) Numeric water quality targets must be identified, and an adequate basis for target(s) as interpretation of water quality standards must be documented. (40 CFR 130.7(c)(1)) The TMDL documents must describe the relationship between numeric target(s) and identified pollutant sources, and estimate total assimilative capacity of the waterbody. (40 CFR 130.7(d) and 40 CFR 130.2(i) and (f)) A TMDL must describe the method used to account for seasonal variations and critical conditions. (40 CFR 130.7(c)). We believe that the TMDL, as drafted, does not comply with any of these requirements.	The proposed TMDL is based on sound science and was based on the input of numerous stakeholders. Numeric targets have been set to attain water quality standards. The assimilative capacity is based on a long-term average deposition patterns over a 10-year period from 1991 to 2001. This time period contains a wide range of storm conditions and flows in the Ballona Creek watershed. Use of the average condition for the TMDL is appropriate because issues of sediment effects on benthic communities and potential for bioaccumulation to higher trophic levels occurs over long time periods. The scientific portions of the TMDL have been peer reviewed in conformance with Health & Safety Code section 57004.
10.3	Beverly Hills	5/12/05	California Health and Safety Code § 57004(b) requires the State and Regional Boards to conduct a scientific peer review of the scientific basis for any rule proposed for adoption by any board, department or office within the Agency.	The scientific portions of the TMDL have been peer reviewed in conformance with Health & Safety Code section 57004.
10.4	Beverly Hills	5/12/05	It must be confirmed that the complete factual basis for the TMDL is contained solely within the reports identified in Section 8 of the staff report.	The staff report, including the reference section, represent all of the documents relied upon in the TMDL. Additional "documents considered" are included in the administrative record.

No.	Author	Date	Comment	Response
10.5	Beverly Hills	5/12/05	We are concerned about the time schedule for implementing the programs set forth in the TMDL. The proposed TMDL is establishing the target reduction goals before the baseline studies are completed. The feasibility of attaining these goals may be dependent upon what is determined in the baseline studies. Additional scientific, technical, economic, and environmental impact information is necessary to establish a TMDL for the Ballona Creek Estuary pursuant to the requirements of the Water Code and CEQA.	The proposed TMDL does not require baseline studies. The results of any special studies are due five years after the effective date of the TMDL. MS4 and Caltrans permittees will submit their final implementation plans 5 ½ years after the effective date and the TMDL will be reconsidered six years after the effective date. The first demonstration of TMDL effectiveness by the MS4 and Caltrans permittees occurs seven years after the effective date of the TMDL, when they must show compliance in 25% of the total drainage area is meeting the TMDL.
10.6	Beverly Hills	5/12/05	The Regional Board has not analyzed the costs and economic impacts of the proposed TMDL in a manner contemplated by the CWA and Water Code § 13241.	See response to comment No. 3.4.
10.7	Beverly Hills	5/12/05	Water Code §13165, and §§ 13225(c) and 13267(b) require that the economic burden of requiring technical monitoring reports must bear a reasonable relationship to the needs for those reports.	The TMDL does not contain self-executing monitoring program requirements, and an appropriate analysis of benefits and burdens will be undertaken when the regional board orders the preparation of a monitoring and reporting program. The TMDL is not adopted pursuant to Water Code section 13267, but subsequent orders may be. Those orders would require an analysis under Water Code section 13267 for entities discharging waste—such as municipal dischargers. The regional board does not anticipate relying on the authority in Water

No.	Author	Date	Comment	Response
				Code section 13225, subdivision (c)—which allows it to require cities to investigate the quality of waters, even if the cities did not cause or contribute to the waste. The BPA does not specify a compliance monitoring program or report, but instead anticipates a further order from the Regional Board' s Executive Officer. At this time, it is not possible to evaluate the burdens of any such report, because the parameters of the program and reports have not been specified in a Water Code section 13267 order. Moreover, the revised BPA shall make clear that the responsible agencies will propose reporting requirements to the Regional Board. As such, the responsible agencies will have a role in determining the actual burden. In developing the 13267 order, the Executive Officer will consider costs in relation to the need for data. With respect to benefits to be gained, the TMDL staff report demonstrates the significant impairment and metals loading. This impairment makes the Los Angeles River toxic to aquatic life, contrary to express national policy and goals. Further documenting success or failure in achieving waste load allocations will benefit the responsible agencies and beneficial uses, so that they know when to

No.	Author	Date	Comment	Response
				scale back or reduce compliance efforts. Water Code section 13165 is not applicable to this TMDL. Not only does the TMDL not rely upon Water Code section 13165, but it could not. The TMDL is being established by the Regional Board. Water Code section 13165, does not apply to the Regional Board; it only applies to the State Board. Further, the proposed BPA does not specify a technical monitoring program or report to be provided by local agencies.
10.8	Beverly Hills	5/12/05	The draft TMDL contains new programs and mandates which go beyond the specific requirements of either the Clean Water Art or the EPA's regulations implementing the CWA. These are new State programs which are not being specifically required by the Federal government, but instead, have been initiated, formulated and proposed by the Regional Board's and State Board's staff. If the Regional Board wishes to impose these programs, it needs to provide a means to pay for their implementation.	The entire TMDL is compelled by federal law, and as such, is not an unfunded state mandate. First, the reductions in loading will be required as part of the NPDES permits. The State Board has previously found that the requirement to reimburse local agencies for state-mandated costs does not apply to NPDES permits. SWRCB Order No. WQ 90-3 (In the Matter of San Diego Unified Port District). Second, the requirement that states develop TMDLs for impaired waters is clearly set forth at 33 U.S.C. 1313(d)-(e). The proposal includes several years for the affected agencies to conduct planning and implementation activities, and to explore and select any necessary funding options, including loans, grants and revenue increases.

No.	Author	Date	Comment	Response
				Moreover, the TMDL implements the applicable water quality standard, and makes all dischargers (regardless of whether they are private individuals, corporations, or public agencies) responsible for meeting the water quality standard. As a result, the TMDL is generally applicable and not subject to subvention requirements in Article XIII.
10.9	Beverly Hills	5/12/05	The draft TMDL contains numerous information collection requirements that would require the permittees to collectively hire dozens of additional employees. These activities go beyond the requirements of EPA's regulations implementing the CWA. Any information collection requirements mandated by federal regulations must be submitted for approval to the Office of Management and Budget under the provisions of the Paperwork Reduction Act (44U.S.C. §§3501 et seq.). These requirements may be invalid for failure to comply with the Paperwork Reduction Act.	The Federal Paperwork Reduction applies only to federal agencies. The federal act has no application to data collection requirements issued by the Regional Board.
10.10	Beverly Hills	5/12/05	The exemption from CEQA by 14 CCR § 125251(g) does not apply because the TMDL does not conform to the requirements of a certified regulatory program. The Board failed to identify potential significant environmental effects, including impacts to water, public service, and utilities and service systems. The Board has not complied with 23 CCR § 3779(a) because the revised staff report and CEQA-related documents do not address prior comments and the notice of hearing for the revised documents allows only 21 days between the comment cutoff and the Board hearing.	See response to comment No. 6.6. The method by which a discharger decides to achieve compliance is a project-level decision that will require an independent environmental review (Pub. Res. C. § 21159.2) which is beyond the scope of analysis that the Regional Board is required to take (Pub. Res. C. § 21159(d).) However, staff has indicated reasonably foreseeable environmental impacts of the TMDL as an overall program, and reasonably foreseeable

No.	Author	Date	Comment	Response
				environmental impacts of feasible methods of implementing the TMDL. The environmental checklist draws on analysis contained in and conclusions reached in the staff report. Because the Regional Board does not prescribe the method of achieving compliance with the TMDL, staff cannot identify all project-level impacts (and associated mitigation measures) that might occur from the myriad of structural and non-structural implementation strategies that could be used to achieve the TMDL. However, staff considered substantial evidence when conducting CEQA review and could find no fair argument that there could be project-level significant environmental impacts. The Regional Board has complied with section 3779, subdivision (a) of title 23, California Code of Regulations. All comments received prior to the end of the comment period (May 12, 2005) have been addressed in a written response to comments. The responses to comments will be available before the July 7, 2005, Board meeting. The regulation only requires that the written responses be available at the Board meeting.

No.	Author	Date	Comment	Response
10.11	Beverly Hills	5/12/05	The Regional Board has not complied with the Administrative Procedures Act (APA) which require a showing of "necessity", "authority", "clarity", "consistency", "reference", and "non-duplication". The Regional Board has not complied with Government Code § 11346.5 nor other procedural requirements of the APA.	The proposed BPA and staff report provide clarity. For purposes of state law, the authority and reference for the TMDL is expressly spelled out in the draft resolution. The TMDL is a program of implementation for existing water quality standards and is necessary under Water Code section 13242. Moreover, as detailed at length in the TMDL document, Basin Plan amendment, and response to comments, the TMDL is necessary to comply with section 303(d)(1)(C) of the Clean Water Act. The need and reference for it to be a Basin Plan amendment is provided not only by Water Code section 13242, but also by 40 CFR 130.6(c)(1) (requiring incorporation into the state's water quality management plan, of which the Basin Plan is the only portion within the responsibility of the Los Angeles Regional Board).
10.12	Beverly Hills	5/12/05	We do not believe that waste load allocations should be made to upstream cities in the absence of data specifically supporting such allocations.	The proposed TMDL and waste load allocations protect the Estuary from contaminated sediment loading by upstream water bodies and the municipal storm drain systems that drain the upstream waterbodies.
10.13	Beverly Hills	5/12/05	We believe that the TMDL should focus on the implementation of BMPs, rather tan establishing inflexible numeric requirements, and that the cities be given adequate time to evaluate the effectiveness of the BMPs and programs, which they have already adopted and implemented.	The BPA and staff report reflect the expectation that storm water permit writers will translate waste load allocations into permit limits in the form of BMPs. Permit writers must provide adequate justification

No.	Author	Date	Comment	Response
				and documentation to demonstrate that specified BMPs are expected to result in attainment of the waste load allocations.
10.14	Beverly Hills	5/12/05	We believe that the TMDL should focus on permittee action only when the primary causes of violations are sources over which individual cities have actual jurisdiction and control.	See response to comment No. 6.5.
11.1	County of LA	5/12/05	As required by Health & Safety Code § 57004(b), the Regional Board is required to "conduct a scientific peer review of the scientific basis for any rule proposed for adoption by any board, department or office within [the California Environmental Protection Agency]." The proposed Basin Plan amendment falls within the definition of "rule," and, therefore, should be subjected to the requisite peer review prior to its adoption by the Regional Board.	The scientific portions of the TMDL have been peer reviewed in conformance with Health & Safety Code section 57004.
11.2	County of LA	5/12/05	The proposed Basin Plan Amendment would use the more restrict Effects Range-Low ("ERL") standard, as opposed to the Effects Range-Medium ("ERM") or other standards for determining the allowable concentrations of toxics in sediment. The Staff Report justifies this determination on the basis that it provides a margin of safety. Since other aspects of the proposed TMDL would provide such a margin of safety, we believe that the failure to justify the selection of the ERL standard is arbitrary, especially given that the State Water Resources Control Board employs the ERM standard.	See response to comment No. 4.2. The ERL values were selected because they are the most protective criteria developed by a government resource agency (National Oceanic and Atmospheric Administration - NOAA). The selection of the most protective criteria provides an implicit margin of safety to account for the uncertainty in the linkage between pollutant sediment concentrations and toxicity. The selection of the most protective criteria was purposeful, not arbitrary.
11.3	County of LA	5/12/05	The proposed amendment violates the Requirements of Water Code § 13242 because it contains no description of the nature of actions, which are necessary to achieve the objectives of the toxics TMDL. Instead,	Section 13242 only requires a "description of the nature of actions," which is what the TMDL staff report describes. Furthermore,

No.	Author	Date	Comment	Response
			the Staff Report contains a series of loosely described non-structural and structural BMPs. Staff conducted no analysis of the ability of these BMPs to achieve compliance with the objectives.	the Regional Board cannot prescribe the method of achieving compliance with the TMDL because of the restrictions in Water Code section 13360, and is unable to describe the nature of all potential actions to achieve compliance. However, the staff report takes into account a reasonably foreseeable means of compliance and the costs associated with compliance.
11.4	County of LA	5/12/05	The proposed BPA does not indicate that the Regional Board considered, or will consider the factors set forth in section 13241 of the Water Code. The Arcadia court found that, because the Trash TMDL represents an amendment of the Basin Plan, Section 13241 applies. State Board Office of Chief Counsel has concluded in a memorandum prepared by Sheila K. Vassey of the Office of Chief Counsel that the Regional Board has an affirmative obligation to consider economics when adopting a TMDL.	See response to comment No. 3.4. In addition, the cited memorandum does not support the commenter. Ms. Vassey's memorandum identifies when economics must be considered, but only the CEQA obligation comes into play with this TMDL. As discussed in Ms. Vassey's memorandum and in response to Comment 3.4, economics must be considered when establishing a water quality objective. This TMDL does not establish a water quality objective. Instead, as required by section 303(d)(1)(C) of the Clean Water Act and section 13242 of the Water Code it establishes a waste load allocation to implement existing water quality objectives, including the narrative objectives as described in section 2.1.2 of the staff report. Again, economics have been extensively considered in developing the TMDL

No.	Author	Date	Comment	Response
				implementation program. For example, the TMDL provides a lengthy implementation period which reflects the economic considerations that a longer period of time will allow a cost-effective mix of implementation measures and BMPs to be developed. In addition, the economic discussion in the staff report satisfies not only the CEQA requirements described in Ms. Vassey's memo, but that analysis would also satisfy any economic "consideration" required by section 13241. Economics were plainly considered in proposing the TMDL; otherwise, the regional board would not have delayed compliance with the final waste load allocations for more than a decade.
11.5	County of LA	5/12/05	The analysis of the two structural BMPs in the staff report is based on the treatment of low flows; there is no assessment of how to treat high-flows. Moreover, the nature of the watershed, including dominant soil types, may hinder the effectiveness of infiltration technology, which often requires pretreatment. The Flow Science report "Technical Review of Proposed Metals TMDLs for the Los Angeles River and Ballona Creek Watersheds," submitted with the August 26, 2004 County comment letter, discusses the relative inability of lower-cost BMPs to remove dissolved metals.	See response to comment No. 7.6. The removal efficiencies of each type of BMP vary depending on site-specific conditions. That is why a successful approach to compliance will involve a matrix of structural and non-structural BMPs that take into account site specific factors.

No.	Author	Date	Comment	Response
11.6	County of LA	5/12/05	The cost estimates for the suggested structural BMPs are inadequate as they exclude costs of land acquisition, conveyance systems, pretreatment devices, surge control, storage vaults or detention basins that may be required when flow rates are high. The costs estimates for the infiltration trenches and sand filters are based on incomplete assumptions, such as not expressing costs in 2005 dollars. Given the extent of these additional costs, such technologies do not meet the "maximum extent practicable" test set forth in the Clean Water Act. There are no cost estimates for other structural BMPs, including wet- or dry-weather diversions, nor the cost of the recommended IRP program. The Board should consider the reports (attached as Exhibits 34, 35, and 36 to the comments of Rutan and Tucker) which suggest far greater costs for BMPs.	The cost analysis is based on reasonably foreseeable compliance methods. Costs of implementing an IRP are not estimated for the purposes of this analysis because metals removal is not the primary goal of an IRP, which addresses multiple wastewater and water resource management needs. All cost assumptions are clearly stated in the staff report, including years in which costs were reported. TMDLs are planning tools under section 303 of the CWA that shall be established solely "to implement the applicable water quality standards with seasonal variations and a margin of safety." (33 U.S.C. 1313(d)(1)(C).) TMDLs are not limited by the maximum extent practicable technology standard of section 402(p)(3)(B)(iii) of the CWA. Moreover, CWA section 402(p)(3)(B)(iii) requires that MS4 dischargers "shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, *and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants*." (Emphasis added.)

No.	Author	Date	Comment	Response
				Even if section 402(p)(3)(B) applied to this TMDL, federal and state courts have uniformly held that the italicized portion of section 402(p)(3)(B) allows NPDES permitting authorities (such as the state) to require compliance with water quality standards. (*Defenders of Wildlife v. Browner* (9th Cir.1999) 191 F.3d 1159 & *BIA v. SWRCB* (2004) 124 Cal.App.4th 866.) When dealing with an impaired water body, it is not only "appropriate" under section 402(p)(3)(B) to include other water quality-based requirements, but consistent with the Clean Water Act's purposes of restoring and protecting our nations waters and the national policy to prohibit discharges of toxic pollutants in toxic amounts, the additional water quality-based requirements would be compelled under section 303(d) of the CWA. Staff has considered the studies to which the commentor is referring in their cost analysis.
11.7	County of LA	5/12/05	The Code of Federal Regulations requires that a TMDL identify both appropriate waste load allocations for point sources and load allocations for nonpoint sources and natural background. 40 CFR §§ 130.2(e)-(i); 130.7(c). This identification also is required by the U.S. EPA guidance for the development of TMDLs in California. The failure to properly identify and quantify such load allocations, including from state and federal facilities, schools and universities, in the proposed Basin Plan	Concentration-based waste load allocations have been assigned to all permitted discharges in the watershed. Load allocations have been assigned to open space and direct air deposition.

No.	Author	Date	Comment	Response
			amendment would violate the Clean Water Act.	
11.8	County of LA	5/12/05	The aerial deposition of metals, due to air pollution, is a factor completely beyond the control of the County or other municipalities in the watershed. We request that the Regional Board require staff to develop an allocation factor for this nonpoint source loading and subtract this factor from the metals required to be addressed by the MS4 permittees. We note the recent case of *Communities for a Better Environment v SWRCB,* Cal. App. 4th 1089 (2003).	See response to comment No. 6.5.
11.9	County of LA	5/12/05	The CEQA analysis improperly segments the project by stating that a separate CEQA review process will likely be required during the implementation of the TMDL. Furthermore, where impacts are identified, staff has consistently assumed that there are, in fact, feasible mitigation measures for every potential adverse impact and has refused to acknowledge that some of the impacts may not be susceptible of any feasible mitigation.	See response to comment No. 10.10.
11.10	County of LA	5/12/05	The CEQA documentation for the proposed Basin Plan Amendment does not discuss any "reasonable alternatives to the proposed activity," as is required pursuant to 23 Cal. Code Reg. § 3777(a)(2).	See response to comment No. 10.10.
11.11	County of LA	5/12/05	The statement of overriding considerations does not meet the requirements of 14 Cal. Code Reg. § 15093, which requires that such a statement "be supported by substantial evidence in the record." Moreover, the lead agency must balance the benefits of a project against its unavoidable environmental risks. Such a balancing has not occurred in the CEQA documentation for the proposed TMDL, because there has been no consideration or analysis of the environmental risks.	See response to comment No. 10.10. The substantial evidence is contained in the TMDL staff report and the response to comments, demonstrating the federal requirement to implement the established water quality standards for metals in the impaired water bodies.
11.12	County of LA	5/12/05	Earth impacts: The Checklist assumes that there will be no unstable earth conditions, increase in erosion, changes in deposition or erosion of beach sands or modifications of channels or exposure of persons to geologic hazards. There is no discussion of the impacts of the	See response to comment No. 10.10. Staff responded with a "no" answer to this question in the CEQA checklist because there is no substantial evidence that there

No.	Author	Date	Comment	Response
			construction of structural BMPs, which may cause unstable earth conditions due to the injection of water into the subsurface and adverse geological conditions. Moreover, changes in the pattern of water flow could result in changes to the beds of unimproved streams as well as changes in the pattern of siltation and beaches. Also, the suggested "mitigation," of siting the BMPs in an area without adverse earth impacts, assumes without any evidence that such areas will exist.	would be significant or reasonably foreseeable impacts on erosion associated with the implementation of the TMDL by permittees. To the extent that construction of structural BMPs would be needed to comply with the TMDL, construction sites are required to retain sediments on site, either by a general construction storm water permit or through the construction program of the applicable MS4 permit—both of which are already designed to minimize or eliminate erosion impacts on receiving water. The staff report references local studies of potential structural BMPs (Caltrans, 2004) which demonstrate that there are areas with suitable soil and subsurface conditions for infiltration and that it is a technically feasible and effective compliance strategy for the Los Angeles River watershed. The argument that no suitable areas for infiltration exist would be speculative and is not supported by substantial evidence.
11.13	County of LA	5/12/05	Air impacts: The Checklist assumes no creation of objectionable odors; however, the storage of urban runoff or stormwater in catch or detention basins, one suggestion for wet-weather BMPs, could result in such odors as well as other nuisances. Moreover, the short-term impacts ascribed to air emissions do not take into account the emissions from sweeper equipment, as well as impacts from increased traffic congestion due to the construction of BMPs.	See response to comment No. 10.10. There is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on air from odors, sweeper emissions, or increased traffic congestion due to construction. The assertion that there could be a significant increase in air pollution due to street

No.	Author	Date	Comment	Response
				sweepers is an unsubstantiated opinion and a speculative possibility. Sweepers are already in use. The TMDL only suggests increasing frequency and efficiency and replacing existing sweepers with improved models. Odors from the retention of storm water are not a reasonably foreseeable impact. Air impacts from potential traffic congestion are also not a reasonably foreseeable impact. The extended nature of the proposed implementation schedule allows for construction projects to be spread out both spatially and temporally. To the extent that any limited, short-term, project-level impacts may exist, they could be mitigated by limiting or restricting hours of construction.
11.14	County of LA	5/12/05	Water impacts: The Checklist assumes environmental impacts in a number of subcategories, but concludes generally that the impacts are positive. There are, however, negative impacts that were not discussed, including the possible subsurface disposal of pollutants infiltrating into structural BMPs and the discharge of eroded sediments into waterways. As the Court in County of Kern held, the negative impacts of projects with otherwise positive impacts must be evaluated in the CEQA process.	See response to comment No. 10.10. Staff responded with a "maybe" answer to this question in the CEQA checklist because to the extent that project-level impacts may exist, they are positive effects. The use of infiltration devices reverses the negative effects of development by increasing pervious surfaces in the watershed. To the extent that negative project-level impacts on groundwater may exist, staff recommended certain mitigation measures to avoid negative impacts, in accordance with 14 CCR 15091, such as proper design and

No.	Author	Date	Comment	Response
				siting of infiltration devices and groundwater monitoring. The assertion that implementation of BMPS would cause the discharge of eroded sediments into waterways is an unsubstantiated opinion and a speculative possibility. The proposed structural BMPs are designed to *remove* sediments.
11.15	County of LA	5/12/05	Animal Life impacts: The Checklist finds that the BMPs considered for TMDL implementation could create no "significant adverse effect" on aquatic life habitat. However, BMPs which substantially reduce the sediment to be deposited in the estuary could, in fact, have a significant adverse effect on habitat by removing the sediment required for that habitat. This impact is not addressed.	See response to comment No. 10.10. The TMDL requires the removal of contaminated sediment, which is toxic to aquatic life. The removal of contaminated sediment is a positive environmental impact.
11.16	County of LA	5/12/05	Noise impacts: The discussion of Noise impacts in the Checklist concludes that the impacts would be "limited and short-term." This conclusion is rebutted by the fact that operation of similar BMPs for the trash TMDL had to be curtailed due to the extreme noise associated with some BMPs. Moreover, to the extent that pump trucks will have to be employed to routinely clean out structural BMPs, which is likely, the noise impacts will not occur only in construction but in the operation of the BMPs.	See response to comment No. 10.10. To the extent that structural BMPs are employed, negative noise impacts could be avoided by properly siting facilities. To the extent that structural BMPs are employed and must be cleaned out by trucks, it is not reasonably foreseeable that these trucks would cause substantial increase in noise. The staff report assumes that structural BMPs would be used in 40% of the watershed. Given the limited frequency with which such structural BMPs would need to be maintained, as stated in the staff report, it is not reasonably foreseeable that their maintenance would lead to an substantial noise impact. Furthermore, the benefits to

No.	Author	Date	Comment	Response
				aquatic life and wildlife habitat of removing toxic pollutants from the river outweigh any potential negative impacts.
11.17	County of LA	5/12/05	Land Use impacts: The Checklist acknowledges the potential for adverse impacts on existing land uses, but asserts that "projects may be designed to address the need for more parks and wildlife habitat." This hope for mitigation ignores the fact that there may be no available land area or funding for the creation of "more parks and wildlife habitat." Moreover, the Checklist fails to detail how the construction of structural BMPs might conflict with existing land uses.	See response to comment No. 10.10. Staff responded with a "maybe" answer to this question in the CEQA checklist because to the extent that project-level impacts may exist, staff recommended certain mitigation measures, in accordance with 14 CCR 15091, that could be adopted by to avoid negative impacts. Such measures include the implementation of projects that address multiple needs, including public parks and wildlife habitat in addition to water quality protection. Furthermore, the benefits to aquatic life and wildlife habitat outweigh any potential negative impacts.
11.18	County of LA	5/12/05	Population and Housing impacts: The Checklist acknowledges no impacts in these areas but, as was noted above, the construction of structural BMPs may require the condemnation of residences, commercial structures and other facilities.	See response to comment No. 10.10. While it is reasonably foreseeable that the installation of infiltration trenches, sand filters, or other structural BMPs will be necessary to achieve compliance with the TMDL, it is not reasonably foreseeable that the installation of these BMPs would lead to sacrificed housing. This is because structural BMPs can be suitable for an ultra-urban setting and can be specifically designed to accommodate limited land area, such as the subsurface Delaware sand filters. Furthermore, based on the estimated size

No.	Author	Date	Comment	Response
				constraints discussed in Appendix III of the staff report, the area required to site structural BMPs is significantly less than the total urbanized portion of the watershed. It is not reasonably foreseeable that there would be a need to displace housing for this limited area. The extent to which housing would be affected by implementation of the TMDL would be purely speculative.
11.19	County of LA	5/12/05	Transportation/Circulation impacts: The Checklist acknowledges only temporary alterations to traffic. It is plain that the construction of thousands of structural BMPs, along with conveyance structures, will cause significant disruption of traffic. These short-term effects must, under the governing case law, be evaluated in a CEQA document.	See response to comment No. 10.10. Staff responded with a "no" answer to this question in the CEQA checklist because there is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on transportation. The assertion that there could be a significant increase in traffic due to thousands of construction projects is an unsubstantiated opinion and a speculative possibility. The extended nature of the proposed implementation schedule allows for construction projects to be spread out both spatially and temporally. To the extent that any limited, short-term, project-level impacts may exist, they could be mitigated by limiting or restricting hours of construction.
11.20	County of LA	5/12/05	Public Service impacts: The Checklist concludes, without analysis, that the only impacts in this area will be with respect to the maintenance of the BMPs themselves and monitoring of the TMDL. The Checklist	See response to comment No. 10.10. Staff responded with a "no" answer to these questions in the CEQA checklist because the

No.	Author	Date	Comment	Response
			ignores the potential for impacts on general municipal services, such as police and fire, if the costs of implementation must be borne from general municipal budgets. Moreover, the construction of BMPs could adversely affect parkland areas.	diversion of resources is an economic impact, which does not contribute to and is not caused by physical impacts on the environment. There is no substantial evidence that there would be a significant or reasonably foreseeable negative impact on parkland areas. While it is reasonably foreseeable that the installation of infiltration trenches, sand filters, or other structural BMPs will be necessary to achieve compliance with the TMDL, it is not reasonably foreseeable that the installation of these BMPs would lead to sacrificed parks and schoolyards. This is because structural BMPs can be suitable for an ultra-urban setting and can be specifically designed to accommodate limited land area, such as the subsurface Delaware sand filters. They can serve multiple land use purposes.
11.21	County of LA	5/12/05	Utilities and Service Systems impacts: While the Checklist acknowledges impacts on stormwater drainage, there is no discussion of the adverse impacts on such systems, nor is there any discussion of mitigation measures that may be required. Nor is there any discussion of the impacts on solid waste disposal from having to remove debris and waste from collection facilities associated with structural BMPs.	See response to comment No. 10.10. Staff has indicated reasonably foreseeable environmental impacts of the TMDL as an overall program, and reasonably foreseeable environmental impacts to storm water drainage (and associated mitigation measures) at the project level. The references cited in the staff report discuss the operation and maintenance requirements of infiltration trenches and sand filters. For example, sand filters in Austin are tested

No.	Author	Date	Comment	Response
				prior to disposal and it has been shown that the media is not toxic and can be safely landfilled. Removal of sand media is typically required every 3 to 5 years.
11.22	County of LA	5/12/05	The Checklist concludes, among other things, that the proposed Basin Plan Amendment will not degrade the quality of the environment nor have cumulative adverse impacts. These conclusions contrast starkly with the CEQA Initial Study prepared in connection with the City of Los Angeles' IRP, which concluded that the construction of BMPs associated with that project. The Initial Study has been attached as Exhibit 19 to the comments of Rutan & Tucker. We hereby incorporate this exhibit as though fully set forth herein. (Commentor refers to comments of Rutan & Tucker on the Los Angeles River and Ballona Creek Metals TMDLs. The attachment is available upon request.)	See response to comment No. 10.10. The staff report supports the IRP but does not require it as an implementation strategy. The cost analysis assumes that compliance in 30% of the watershed would be achieved through IRP in order to provide a reasonable estimate of potential costs associated with compliance.
11.23	County of LA	5/12/05	The checklist and staff report do not meet the statutory requirements for a substitute environmental document. Alternatives are discussed in the Checklist and in the Staff Report (but not in the responses to comments which, as noted above, have yet to be provided to the public). Neither the Checklist nor the Staff Report provide any meaningful mitigation or alternatives, but merely vague assurances that have no empirical basis. The Staff Report also fails to provide any specific mitigation measures that could be adopted by dischargers. While the Secretary of Resources has certified the basin planning process as exempt from certain requirements of CEQA, a certified regulatory program still must comply with CEQA's remaining policies and requirements. *Environmental Protection Information Center v. Johnson* (1985) 170 Cal. App. 3d 604.	See response to comment No. 10.10.
11.24	County of LA	5/12/05	The Checklist and Staff Report do not discuss alternatives to the "project" represented by the TMDL, in direct violation of CEQA and the Regional Board's own regulations in Title 23 of the Code of	See response to comment Nos. 6.6 and 10.10.

No.	Author	Date	Comment	Response
			Regulations.	
11.25	County of LA	5/12/05	No cost/benefit analysis required by Water Code §§ 13225(c) and 13267 has been conducted of the compliance/ambient monitoring programs required in the proposed Basin Plan amendment, nor of the proposed special studies required under the amendment. The San Diego Superior Court in the *Arcadia* case invalidated that TMDL in part due to the Regional Board's failure to conduct such a cost/benefit analysis prior to adoption of that TMDL.	See response to comment No. 10.7.
11.26	County of LA	5/12/05	The 12-month timeline to prepare and submit a draft implementation plan should be extended to 4 years to allow the results of any special studies to be incorporated into the implementation plan.	See response to comment No. 4.4.
11.27	County of LA	5/12/05	The 15-year wet-weather compliance timeline should be extended to 22 years; because achieving compliance with the very stringent waste load allocations is an equally challenging task.	Staff believes that 15 years is enough time to comply with the toxics TMDL.
11.28	County of LA	5/12/05	Article XIII B, Section 6 of the California Constitution requires a state agency which mandates a new program or a higher level of service to provide a "subvention" of funds to reimburse local governments for the costs of the program or increased level of service. The TMDL will require significant outlays of funds by local governments to design, install, construct and maintain both non-structural and structural BMPs. No funding mechanism, however, has been provided for the TMDL by the state. The TMDL also goes far beyond the specific requirements of the Clean Water Act or USEPA's regulations, and represents in fact a state program not a federal program.	See response to comment No. 10.8.
12.1	WATER	5/12/05	Our review of the toxic pollutant sediment TMDL for Ballona Creek Estuary has found that the TMDL lacks both the credible lines of evidence needed to assess if an impairment exists, and, if so, to correct that impairment.	See response to comment No. 5.2.
12.2	WATER	5/12/05	This comment is specific to the Los Angeles River and Ballona Creek	N/A

No.	Author	Date	Comment	Response
			Metals TMDLs.	
12.3	WATER	5/12/05	The Board should undertake more stakeholder involvement and conduct further workshops to more fully receive and consider comments from dischargers before adopting these TMDLs.	See response to comment No. 7.12.
12.4	WATER	5/12/05	The TMDL is not technically sound, does not incorporate cost-effective approaches, and is not consistent with state and federal policies.	The TMDL is technically sound, it incorporates cost-effective approaches, and it is consistent with state and federal policies. The TMDL implements existing water quality objectives, including the narrative objectives described in section 2.2.2 of the staff report, under Water Code section 13242. Moreover, as detailed at length in the TMDL document, Basin Plan amendment, and response to comments, the TMDL complies with section 303(d)(1)(C) of the Clean Water Act and the express national policy that the discharges of toxic pollutants in toxic amounts be prohibited. (33 U.S.C. § 1251(a)(3).)
13.1	CSDLAC	5/12/05	The Districts believe additional time is required to allow for a more inclusive stakeholder process. Due to the impact this TMDL is likely to have on future sediment TMDLs in other watersheds in the Los Angeles region, the Districts strongly urge the Regional Board to delay the Public Hearing date on the draft Ballona Toxics TMDL so that stakeholders' comments can be fully considered and incorporated.	Although the public comment period has not been extended, the hearing date has been continued to July 7, 2005. See response to comment No. 7.12.
13.2	CSDLAC	5/12/05	The use of ERLs as numeric targets in the TMDL is inappropriate due to their exceedingly poor predictability of toxicity. It has been shown in scientific studies that there is no relationship between ERLs and the threshold point of toxicity, which is why these measures should not be	See response to comment No. 4.2.

No.	Author	Date	Comment	Response
			used as numeric targets, above which sediment is presumed to be "impaired" for that particular constituent. ERLs are unlikely to predict either sediment toxicity or actual effects in local biology.	
13.3	CSDLAC	5/12/05	Most critical to the success of the TMDL is control of the pollutant(s) that cause the observed impairment. The fact that a chemical exceeds its ERL does not establish causation. Using the ERL as a numeric target presumes that if sediment exceeds the ERL for a particular pollutant, then that sediment will likely be toxic due to that pollutant. The simplistic reliance on sediment quality guidelines, without consideration of causation will lead to control of the wrong compounds and be ineffective at achieving the goal of the TMDL.	See response to comment No. 4.2.
13.4	CSDLAC	5/12/05	It is clear that the Effects Range-Median, or ERM, is being used by the SWRCB, along with other lines of evidence, to indicate impairment. Whereas, the draft Ballona Toxics TMDL employs a far more conservative measure the exceedance of an ERL as the single line of evidence to indicate impairment of beneficial uses. The gap between these standards is unjustified; logic would suggest that achieving sediment conditions below that which causes an observable effect would be the appropriate target.	See response to comment No. 4.2.
13.5	CSDLAC	5/12/05	In several areas of the draft Ballona Toxics TMDL, the Regional Board has justified the selection of ERLs (over ERMs) as the numeric targets by asserting that ERLs provide an implicit margin of safety. The Regional Board has typically applied a 10% margin of safety to numeric targets in other TMDLs. The use of ERLs to provide an implicit margin of safety is overly conservative.	See response to comment No. 4.2. The use of the ERL is required to ensure an implicit margin of safety.
13.6	CSDLAC	5/12/05	It is clear that the current use of ERLs as numeric targets is inconsistent with the SWRCB' s direction.Through the use of the ERLs as numeric targets, the TMDL implies that achieving the ERL for a particular constituent represents the attainment of the narrative water quality	See response to comment No. 4.2.

No.	Author	Date	Comment	Response
			standards and that the measurable endpoint is the ERL itself. However, based on the SWRCB' s direction in developing the sediment quality objectives, the TMDL should utilize a multiple line of evidence approach that incorporates biological effects as well as exposure endpoints.	
13.7	CSDLAC	5/12/05	At a minimum, the Districts recommend using the ERM rather than the ERL as the interim numeric sediment chemistry measure used to derive the loading capacity and load and waste load allocations. Although ERMs were only found to predict toxicity approximately 40% of the time when evaluated against large data sets of chemical pollution and toxicity. They are at least more predictive than ERLs and are consistent with the measures required for use under the SWRCB' s 303(d) listing policy for determining impairment.	See response to comment No. 4.2. The use of the ERL is required to ensure an implicit margin of safety.
14.1	Western Growers	5/12/05	The Regional Board has failed to establish that an impairment in the sediments of Ballona Creek Estuary exists, therefore, the development of a TMDL is inappropriate. The TMDL presents no evidence of toxicity in the sediments and the use of the sediment quality guidelines alone based on a "single line of evidence" is inadequate to justify a listing. The Scientific Steering Committee recommends that multiple lines of evidence be evaluated before determining that the sediment is impaired. In addition, the sediment chemistry data is more than five years and the estuary sediments are dredged about every two years.	See response to comment No. 5.1.
14.2	Western Growers	5/12/05	The use of ERL values as numeric targets for final sediment concentrations is unsupported by scientific literature. Numerous studies have noted the lack of association between effect of impact in sediments and the comparison of sediment chemical concentrations with ERL and ERM values. Even if an impairment exists there is no reason to believe that enforcement of the TMDLs will resolve that impairment.	See response to comment No. 4.2.
14.3	Western	5/12/05	The TMDL staff report estimates that, on average, approximately	See response to comment No. 5.3.

No.	Author	Date	Comment	Response
	Growers		45,000 m^3/yr of sediment are transported by Ballona Creek annually. The staff report also finds that approximately 110,000 m^3/yr of sediment are deposited annually adjacent to the creek mouth. Clearly, there is another source of sediment to the creek mouth area (longshore transport) that is more significant than the sediments transported by Ballona Creek.	
14.4	Western Growers	5/12/05	The TMDLs are developed based on the assumption that all sediment-associated metals will deposit in a limited area at the Creek mouth, that no metals associated with creek-delivered sediment will travel beyond this limited area, and that no metals are transported into the area on sediments from other sources. These assumptions result in TMDL that are far lower than are appropriate. In addition, even if these low targets could be met for sediments transported by the creek there is no assurance that target concentrations would be met due to the significant contribution of sediments from longshore transport.	See response to comment No. 5.4.
14.5	Western Growers	5/12/05	We encourage the Regional Board to delay adoption of the Ballona Creek Estuary Toxics TMDL. At a minimum, the implementation plan for the TMDL should be restricted to the collection of the data that would be required to establish that impairments exists and to establish the causative agents for that impairment.	See response to comment No. 5.5.